



PUBLIC NOTICE

Federal Communications Commission
445 12th St., S.W.
Washington, D.C. 20554

News Media Information 202 / 418-0500
Fax-On-Demand 202 / 418-2830
TTY 202 / 418-2555
Internet: <http://www.fcc.gov>
ftn fcc.gov

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ACTIONS TAKEN UNDER CABLE LANDING LICENSE ACT

Section 1.767(a) Cable Landing Licenses, Modifications, and Assignments or Transfers of Control of Interests in Cable Landing Licenses (47 C.F.R. § 1.767(a))

By the Chief, Policy Division, International Bureau:

Pursuant to An Act Relating to the Landing and Operation of Submarine Cables in the United States, 47 U.S.C. §§ 34-39 (Cable Landing License Act), Executive Order No. 10530, Exec. Ord. No. 10530 *reprinted as amended in* 3 U.S.C. § 301, and section 1.767 of the Commission's rules, 47 C.F.R. § 1.767, the following applications ARE GRANTED. These grants of authority are taken under section 0.261 of the Commission's rules, 47 C.F.R. § 0.261, and are effective upon release of this public notice. Petitions for reconsideration under section 1.106 or applications for review under section 1.115 of the Commission's rules, 47 C.F.R. §§ 1.106, 1.115, may be filed within 30 days of the date of this public notice.

This public notice serves as each cable landing licensee's Cable Landing License, or modification thereto, pursuant to the Cable Landing License Act and sections 1.767 and 1.768 of the Commission's rules. Cable landing licensees should review carefully the terms and conditions of their licenses. Failure to comply with these terms and conditions or relevant Commission rules and policies could result in fines or forfeitures.

The Commission most recently amended its rules applicable to submarine cable landing licenses in *Review of Commission Consideration of Applications under the Cable Landing License Act*, IB Docket No. 00-106, FCC 01-332 (rel. Dec. 14, 2001), 67 Fed. Reg. 1615 (Jan. 14, 2002). An updated version of sections 1.767 and 1.768 of the rules is available at <http://www.fcc.gov/ib/pd/pf/telecomrules.html>. See also http://hraunfoss.fcc.gov/edocs_public/attachmatch/DA-02-598A1.pdf for a March 13, 2002 Public Notice; http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-01-332A1.pdf for the December 14, 2001 Report and Order.

SCL-LIC-20020807-00066
SCL-AMD-20020808-00067

NORTHERN LIGHTS HOLDINGS, INC.

SUBMARINE CABLE LANDING LICENSE

Action Taken:

Grant of authority (i) to land and operate a submarine fiber optic cable between Shemya, Aleutian Islands, Alaska and a branching unit on the TyCom Pacific Cable System, SCL-LIC-20000717-00026, 15 FCC Rcd. 24078 (segment 1), (ii) to land and operate a submarine fiber optic cable between Seward, Alaska and another branching unit on the TyCom Pacific Cable System (segment 2); and to land and operate a submarine fiber optic cable between Kodiak Island, Alaska and a branching unit on the Seward (segment 3). The cable system will be known as Northern Lights Cable Network (Northern Lights Network).

Acceptability for Filing Public Notice: August 23 and 28, 2002. We received no Executive Branch or Public Comment.

Regulatory Status of Cable: Northern Lights Network is a private cable) (consistent with NARUC I, 525 F. 2d 630, 642 (D.C. Cir. 1976), cert. denied, 425 U.S. 992 (1976)). Applicant proposes to operate on a non common carrier basis and the record provides no reason to require the cable to operate on a common carrier basis.

Applicable Conditions and Requirements: See the routine conditions set out at 47 C.F.R. § 1.767(g)(1)-(14).

License Information:

Northern Lights Holdings, Inc. (Northern Lights) is a corporation organized under the laws of the state of Delaware. It is a wholly owned subsidiary of Crest Communications Corporation, a Delaware corporation, which in turn is a wholly owned subsidiary of Neptune Communications L.L.C. which is a limited company organized under the laws of the state of Delaware.

Interlocking Directorates: None

Cable System Design, Capacity, and Projected In Service Date:

Northern Lights Network will consist of two fiber pairs on three interrelated cable segments, and will be interconnected at two branching units on the Northern Segment of the TyCom Pacific Cable System and one branching unit on segment 2.

Northern Lights will own and operate the three cable landing stations as well as the cable segments from each landing station to branching units. Northern Lights will have sufficient capacity on the Northern Segment of the TyCom Pacific Cable System, on an indefensible right of use basis, initially for two wavelengths from the Seward branching unit to an interface point in its Hillsboro, Oregon Network Operations Control Center; and from the Shemya, Aleutian Island branching unit to the Seward branching unit.

The Northern lights Network will be a digital fiber optic system with each segment having two fiber pairs and a minimum design capacity of 640 Gbps per fiber optic pair. Each fiber pair will be capable of carrying a minimum of sixty-four wavelengths of traffic, with each wavelength operating at a nominal rate of 10 Gbps. Initially, the first two wavelengths will have a nominal capacity of 20 Gbps.

Applicant anticipates that the Northern Lights Networks will be ready for commercial service beginning on the first half of 2003.

Attached Map: See attached map for Northern Lights

Cable Station Information:

Northern Lights Network will have three landing stations at: Shemya, Aleutian Islands, Alaska; Seward Alaska; and Kodiak Alaska.

Landing Point Information: Licensee must provide specific description of cable landing stations, *see* 47 C.F.R. § 1.67(a)(5), (g)(8).

ROUTINE CONDITIONS APPLICABLE TO ALL LICENSEES. *See* 47 C.F.R. § 1.767(g).

- (1) Grant of the cable landing license is subject to: (i) all rules and regulations of the Federal Communications Commission; (ii) any treaties or conventions relating to communications to which the United States is or may hereafter become a party; and (iii) any action by the Commission or the Congress of the United States rescinding, changing, modifying or amending any rights accruing to any person by grant of the license;
- (2) The location of the cable system within the territorial waters of the United States of America, its territories and possessions, and upon its shores shall be in conformity with plans approved by the Secretary of the Army. The cable shall be moved or shifted by the licensee at its expense upon request of the Secretary of the Army, whenever he or she considers such course necessary in the public interest, for reasons of national defense, or for the maintenance and improvement of harbors for navigational purposes;
- (3) The licensee shall at all times comply with any requirements of United States government authorities regarding the location and concealment of the cable facilities, buildings, and apparatus for the purpose of protecting and safeguarding the cables from injury or destruction by enemies of the United States of America;
- (4) The licensee, or any person or company controlling it, controlled by it, or under direct or indirect common control with it, does not enjoy and shall not acquire any right to handle traffic to or from the United States, its territories or its possessions unless such service is authorized by the Commission pursuant to section 214 of the Communications Act, as amended;
- (5) (i) The licensee shall be prohibited from agreeing to accept special concessions directly or indirectly from any foreign carrier, including any entity that owns or controls a foreign cable landing station, where the foreign carrier possesses sufficient market power on the foreign end of the route to affect competition adversely in the U.S. market, and from agreeing to accept special concessions in the future. (ii) For purposes of this section, a special concession is defined as an exclusive arrangement involving services, facilities, or functions on the foreign end of a U.S. international route that are necessary to land, connect, or operate submarine cables, where the arrangement is not offered to similarly situated U.S. submarine cable owners, indefeasible-right-of-user holders, or lessors, and includes arrangements for the terms for acquisition, resale, lease, transfer and use of capacity on the cable; access to collocation space; the opportunity to provide or obtain backhaul capacity; access to technical network information; and interconnection to the public switched telecommunications network.

Note to § 1.767(g)(5): Licensees may rely on the Commission's list of foreign carriers that do not qualify for the presumption that they lack market power in particular foreign points for purposes of determining which foreign carriers are the subject of the requirements of this section. The Commission's list of foreign carriers that do not qualify for the presumption that they lack market power is available from the International Bureau's World Wide Web site at <http://www.fcc.gov/ib>.

- (6) Except as provided in paragraph (7) of this section, the cable landing license and rights granted in the license shall not be transferred, assigned, or disposed of, or disposed of indirectly by transfer of control of the licensee, unless the Federal Communications Commission gives prior consent in writing;

(7) A pro forma assignee or a person or company that is the subject of a pro forma transfer of control of a cable landing license is not required to seek prior approval for the pro forma transaction. A pro forma assignee or person or company that is the subject of a pro forma transfer of control must notify the Secretary, Federal Communications Commission, Washington, D.C. 20554, with a copy to the Chief, International Bureau, Federal Communications Commission, no later than thirty (30) days after the assignment or transfer of control is consummated. The notification may be in the form of a letter (in duplicate to the Secretary), and it must contain a certification that the assignment or transfer of control was pro forma, as defined in § 63.24(a) of this chapter, and, together with all previous pro forma transactions, does not result in a change of the licensee's ultimate control. A single letter may be filed for an assignment or transfer of control of more than one license issued in the name of a licensee if each license is identified by the file number under which it was granted;

(8) Unless the licensee has notified the Commission in the application of the precise locations at which the cable will land, as required by paragraph (a)(5) of this section, the licensee shall notify the Commission no later than ninety (90) days prior to commencing construction at that landing location. The Commission will give public notice of the filing of each description, and grant of the cable landing license will be considered final with respect to that landing location unless the Commission issues a notice to the contrary no later than sixty (60) days after receipt of the specific description. *See* § 1.767(a)(5) of this section;

(9) The Commission reserves the right to require the licensee to file an environmental assessment should it determine that the landing of the cable at the specific locations and construction of necessary cable landing stations may significantly affect the environment within the meaning of § 1.1307 of this part implementing the National Environmental Policy Act of 1969. *See* § 1.1307(a) and (b) of this part. The cable landing license is subject to modification by the Commission under its review of any environmental assessment or environmental impact statement that it may require pursuant to its rules. *See also* § 1.1306 note 1 and § 1.1307(c) and (d) of this part;

(10) The Commission reserves the right, pursuant to section 2 of the Cable Landing License Act, 47 U.S.C. 35, Executive Order No. 10530 as amended, and section 214 of the Communications Act of 1934, as amended, 47 U.S.C. 214, to impose common carrier regulation or other regulation consistent with the Cable Landing License Act on the operations of the cable system if it finds that the public interest so requires;

(11) The licensee, or in the case of multiple licensees, the licensees collectively, shall maintain de jure and de facto control of the U.S. portion of the cable system, including the cable landing stations in the United States, sufficient to comply with the requirements of the Commission's rules and any specific conditions of the license;

(12) The licensee shall comply with the requirements of § 1.768 of this part;

(13) The cable landing license is revocable by the Commission after due notice and opportunity for hearing pursuant to section 2 of the Cable Landing License Act, 47 U.S.C. 35, or for failure to comply with the terms of the license or with the Commission's rules; and

(14) The licensee shall notify the Secretary, Federal Communications Commission, Washington, D.C. 20554, in writing, within thirty (30) days of the date the cable is placed into service, of the date the cable was placed into service. The cable landing license shall expire twenty-five (25) years from the in-service date, unless renewed or extended upon proper application. Upon expiration, all rights granted under the license shall be terminated.

REQUIREMENTS APPLICABLE TO LICENSES AFFILIATED WITH A CARRIER WITH MARKET POWER IN A CABLE'S WTO DESTINATION MARKET. *See* 47 C.F.R. § 1.767(l).

Any licensee that is, or is affiliated with, a carrier with market power in any of the cable's WTO Member destination countries, and that requests streamlined processing of an application under paragraphs (j)-(k) of this section, must comply with the following requirements:

(1) File quarterly reports summarizing the provisioning and maintenance of all network facilities and services procured from the licensee's affiliate in that destination market, within ninety (90) days from the end of each calendar quarter. These reports shall contain the following: (i) the types of facilities and services provided (for example, a lease of wet link capacity in the cable, collocation of licensee's equipment in the cable station with the ability to provide backhaul, or cable station and backhaul services provided to the licensee); (ii) for provisioned facilities and services, the volume or quantity provisioned, and the time interval between order and delivery; and (iii) the number of outages and intervals between fault report and facility or service restoration; and

(2) File quarterly circuit status reports, within ninety (90) days from the end of each calendar quarter and in the format set out by the § 43.82 annual circuit status manual with the exception that activated or idle circuits must be reported on a facility-by-facility basis and derived circuits need not be specified. *See* § 63.10(c)(5) of this chapter.

For additional information, contact the International Bureau's Policy Division at 202-418-1460.